

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATIE CHALFANT

Appeal No. 2000-0179
Application No. 08/923,774

HEARD: MAY 9, 2001

Before CALVERT, Administrative Patent Judge, McCANDLISH, Senior Administrative Patent Judge, and BAHR, Administrative Patent Judge.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 9-20, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a shopping cart having a basket frame and first and second seat sections positioned in tandem one in front of the other, each of the sections being pivotally mounted to the basket frame in such a manner as to permit the section to be pivoted upwardly to a substantially horizontal position so that the cart may receive a portion of a second cart for purposes of storage (claims 9-17). Another aspect of appellant's invention is that the first and second seat sections each include a rear wall pivotally mounted on vertical support rods extending upward along opposite sides of the basket frame, a back support pivotally connected to the rear wall and a seat bottom pivotally mounted to the rear wall and slidably connected to the back support, wherein the seat section may be alternately placed into a use position extending generally horizontally between the rear wall and back support and a collapsed position wherein the seat bottom and back support are collapsed in a generally vertical position against the rear

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wall (claims 18-20). The claims on appeal are reproduced in the appendix to appellant's brief.¹

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Sides	2,998,978	Sept. 5, 1961
Hummer	3,157,410	Nov. 17, 1964
Dunkley	867,840	May 10, 1961
(British patent specification)		

The following rejections are before us for review.

Claims 9-15 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sides in view of Dunkley.

Claim 16 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sides in view of Dunkley and Hummer.

Reference is made to the brief and reply brief (Paper Nos. 26 and 28) and the answer (Paper No. 27) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

¹ Claim 10 in appellant's appendix contains a minor error in reproduction, in that, in line 8, "real" should be "rear."

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, to the Ruger and Chalfant declarations (Paper No. 20) and the Stierle declaration (Paper No. 19)², and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Claims 9-15 and 17

The subject matter of claims 9-15 and 17 differs from the shopping cart of Sides in that Sides discloses only one seat section pivotally mounted to the basket frame, rather than two such seat sections as required by the claims. The examiner's position, as stated on page 5 of the answer, is that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide multiple seats in tandem one in front of the other as taught by Dunkley for the purpose of carrying a second passenger.

² We note that Paper Nos. 19 and 20 were entered in reverse order of their receipt in the Patent and Trademark Office (PTO).

Dunkley is directed to a collapsible baby carriage comprising two seats in tandem for the purpose of carrying more than one child. While we do appreciate that both Sides and Dunkley address the problem of collapsible seat assemblies for carrying children, it is not apparent to us why one of ordinary skill in the art would have found suggestion in the teaching by Dunkley of a tandem seat arrangement in a baby carriage to provide a second seat section in the Sides shopping cart, especially in light of the very disparate structural and functional features of the Sides shopping cart and the Dunkley baby carriage. From our perspective, the only suggestion for combining the applied references in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure.³ This, of course, is not a proper basis for a rejection. See

³ While the Doty (U.S. Pat. No. 5,312,122) and Gray (U.S. Des. Pat. No. 336,993) patents and the Shop-Along Child Carrier alluded to in the Ruger, Chalfant and Stierle declarations teach the desirability of providing seating for more than one child in a shopping cart, these references would have suggested furnishing such seating by either providing four leg openings in the rear wall of the collapsible pivotable seat section (Gray) or providing an additional seat as an attachment to the rear of the shopping cart (Doty and Shop-Along).

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In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

As we conclude that the applied references are not sufficient to establish a prima facie case of obviousness of the claimed subject matter, a discussion of the Ruger, Chalfant and Stierle declarations filed by appellant in support of patentability is not necessary. We shall not sustain the examiner's rejection of claims 9-15 and 17 under 35 U.S.C. § 103.

Claim 16

We turn now to the examiner's rejection of claim 16 as being unpatentable over Sides in view of Dunkley and Hummer. The examiner relies on Hummer for its disclosure of a hinge bar (top axle) extending across the top of the end gate 11 for pivotal mounting of the end gate with respect to the shopping cart frame. We also note that Hummer teaches that "the number of leg holes may be varied to provide accommodation for two or more children" (column 2, lines 35-38). While this teaching by Hummer might have suggested the desirability of providing seating for more than one child in the Sides shopping cart, Hummer would not have suggested providing a

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second seat section in tandem with the seat section (seat structure) of Sides pivotally mounted to the basket frame as required by claim 16. Thus, Hummer does not cure the deficiency of the combination of Sides and Dunkley discussed above. Accordingly, we shall also not sustain the examiner's rejection of claim 16, which depends from claim 10, as being unpatentable over Sides in view of Dunkley and Hummer.

Claims 18-20

The subject matter of claims 18-20 differs from the Sides shopping cart in that Sides lacks a second seat section as recited in claim 18 and in that the rear wall (receptacle wall 25) of Sides lacks a top axle extending between and pivotally mounted upon vertical support rods which extend upward along opposite sides of said basket frame. Rather, the Sides receptacle wall 25 includes vertical rods terminating at the top in eyelets which surround a horizontal axle forming part of the basket frame.

As for the details of the pivotal attachment of the rear wall to the basket frame, the examiner finds that Hummer teaches such an arrangement and determines that it would have been obvious to one of ordinary skill in the art at the time

appellant's invention was made to modify the pivotal connection of the Sides receptacle wall 25 to the basket frame to the arrangement taught by Hummer for the purpose of providing fixed transverse support to the vertical wire members thus strengthening the upper end of the rear seat member (answer, page 6) and appellant does not contest this position.

As for the provision of a second seat section, the examiner takes the position that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide multiple seats in tandem one in front of the other in sides as taught by Dunkley for the purpose of carrying a second passenger. For the reasons discussed above, we do not share the examiner's view that Dunkley provides such suggestion.

As discussed, supra, Hummer provides no suggestion to add a second seat section as recited in claim 18 in tandem with the seat structure of Sides and, thus, does not cure the above-noted deficiency of the combination of Sides and

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Dunkley.⁴ Accordingly, we shall not sustain the examiner's rejection of claims 18-20 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims 9-20 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
HARRISON E. McCANDLISH)	APPEALS
Senior Administrative Patent Judge)	
) AND)	
)	INTERFERENCES
)	
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)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

⁴ In this regard, we note that, while Doty may have suggested attaching a removable second seat external to the Sides shopping cart basket frame, the seat attachment taught by Doty lacks "a rear wall having a top axle extending between and pivotally mounted upon vertical support rods which extend upward along opposite sides of said basket frame" as recited in claim 18.

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